

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

TREXEL, INC. and
MASSACHUSETTS INSTITUTE
OF TECHNOLOGY,

Plaintiffs

v.

DISPOZ-O PRODUCTS, INC.,

Defendant

No. 04 CV 10879 JLT

**ANSWER TO COUNTERCLAIM
JURY CLAIM**

First Answer

Plaintiffs/Defendants in Counterclaim Trexel Inc. ("Trexel") and Massachusetts Institute of Technology ("MIT") (collectively "Counterclaim Defendants") answer the allegations in the individual paragraphs of the Counterclaim as follows, with the caveat that Trexel is answering all of the allegations while MIT is answering only the allegations in ¶¶3-7, 27-28 and 67-74 because only those latter allegations appear to pertain to MIT.

1. Counterclaim Defendants are without sufficient information to admit or deny the allegations.
2. Admitted.
3. Admitted.
4. The Counterclaim Defendants need not respond to the allegations because they concern conclusions of law.
5. Admitted.
6. Admitted.

7. Counterclaim Defendants admit that venue lies in this District but deny that this District is not the most appropriate venue for resolving this matter.

8. Counterclaim Defendants admit that on September 18, Dispoz-o and Trexel entered into an Extrusion License Agreement (“Dispoz-o License”) and state further that the terms of the Dispoz-o License speak for themselves.

9. Counterclaim Defendants deny that Trexel made all of the alleged representations. Counterclaim Defendants otherwise are without sufficient information to admit or deny the allegations.

10. Denied.

11. Denied.

12. Counterclaim Defendants are without sufficient information to admit or deny the allegations.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

17. Admitted.

18. Counterclaim Defendants are without sufficient information to admit or deny the allegations.

19. Counterclaim Defendants admit that on January 11, 2002, Trexel sent a letter to Dispoz-o, the terms of which speak for themselves.

20. Counterclaim Defendants are without sufficient information to admit or deny the allegations.

21. Admitted.

22. Admitted.

23. Trexel admits that Dispoz-o returned specific equipment to Trexel but further states that Dispoz-o improperly delayed the return of the equipment so that Dispoz-o could copy it and misappropriate the technology.

24. Admitted.

25. Admitted.

26. Counterclaim Defendants admit that Trexel became aware that prior to the litigation Dispoz-o was marketing and selling Envirofoam school trays and that Trexel concluded that Dispoz-o was using a C02 process.

27. Counterclaim Defendants deny the allegations, inasmuch as the Verified Complaint in this case asserted that Dispoz-o's manufacturing process infringed upon MIT's patents and violated the Settlement Agreement.

28. Denied.

29. Counterclaim Defendants restate and incorporate by reference their answers to the allegations in Paragraphs 1-28.

30. Denied.

31. Denied.

32. Denied.

33. Counterclaim Defendants restate and incorporate by reference their answers to the allegations in Paragraphs 1-33.

34. Denied.

35. Denied.

36. Denied.

37. Counterclaim Defendants restate and incorporate by reference their answers to the allegations in Paragraphs 1-37.

38. Admitted.

39. Counterclaim Defendants state that the terms of the Dispoz-o License speak for themselves.

40. Denied.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

45. Counterclaim Defendants need not respond to the allegations because they concern conclusions of law.

46. Denied.

47. Denied.

48. Denied.

49. Counterclaim Defendants restate and incorporate by reference their answers to the allegations in Paragraphs 1-49.

50. Denied.

51. Denied.

52. Denied.

53. Denied.

54. Denied.

55. Counterclaim Defendants restate and incorporate by reference their answers to the allegations in Paragraphs 1-55.

56. Denied.

57. Denied.

58. Denied.

59. Denied.

60. Denied.

61. Counterclaim Defendants restate and incorporate by reference their answers to the allegations in paragraphs 1-60.

62. Denied.

63. Denied.

64. Denied.

65. Denied.

66. Denied.

67. Counterclaim Defendants restate and incorporate by reference their answers to the allegations in paragraphs 1-67.

68. Counterclaim Defendants deny that the patents-in-suit are void, invalid or unenforceable. Defendants need not respond to the remaining allegations because they concern conclusions of law.

69. Counterclaim Defendants need not respond to the allegations because they concern conclusions of law.

70. Counterclaim Defendants need not respond to the allegations because they concern conclusions of law.

71. Counterclaim Defendants restate and incorporate by reference their answers to the allegations in paragraphs 1-71.

72. Counterclaim Defendants need not respond to the allegations because they concern conclusions of law.

73. Counterclaim Defendants need not respond to the allegations because they concern conclusions of law.

74. Counterclaim Defendants need not respond to the allegations because they concern conclusions of law.

Second Defense

Dispoz-o fails to state a claim for which relief can be granted.

Third Defense

Dispoz-o cannot assert the counterclaims in Counts III to VII because of accord and satisfaction.

Fourth Defense

By reason of its conduct, Dispoz-o is estopped from asserting its counterclaims.

Fifth Defense

Dispoz-o is barred by waiver from asserting its counterclaims.

Sixth Defense

Dispoz-o's counterclaims are barred by the doctrine of unclean hands.

Wherefore, Counterclaim Defendants request that the Court:

1. Dismiss Counts I-VII of the Counterclaims;
2. Enter judgment in favor of the Counterclaim Defendants on the Counterclaims;
3. Enter a declaratory judgment pursuant to Count VIII of the Counterclaim that the MIT patents-in-suit are valid and enforceable;

4. Enter a declaratory judgment pursuant to Count IX of the Counterclaim that Dispoz-o has infringed the MIT patents-in-suit;
5. Award the Counterclaim Defendants their costs and expenses, including reasonable attorneys' fees; and
6. Grant such other relief as the Court deems just and proper.

COUNTERCLAIM DEFENDANTS CLAIM A JURY TRIAL ON ALL ISSUES TRIABLE TO A JURY.

TREXEL INC. and
MASSACHUSETTS INSTITUTE OF
TECHNOLOGY,

Defendants in Counterclaim,

By their attorneys,

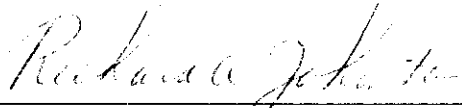


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Dated: July 20, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document was served upon the attorneys of record for each other party by mail on July 20, 2004.


Richard A. Johnston